IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3465 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VIJAYSINH @ VIPUL PRABHATSINH @ NAGARSINH PARMAR

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

Mr. S.T. Mehta, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 10/01/2000

ORAL JUDGEMENT

Heard learned Advocate Ms. Subhadraben G. Patel for the petitioner and learned A.G.P. Mr. S.T. Mehta, on behalf of the respondents nos.1, 2 and 3.

1 The detention order dated 9-4-1999 passed by the District Magistrate, Bharcuch (the respondent no.2) against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1981("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution of India.

2. The grounds of detention served to the petitioner under Section 9(1) of "PASA", copy of which is produced on record at Annexure "B" inter alia indicate that Prohibition Case bearing no.403/98 was registered against the petitioner on 10-12-1998 at Jhagadia Police Station for the offences made puinishable under Secs.66-B, 65-E , 116-B and 81 of the Bombay Prohibition Act wherein it has been alleged that 440 bottles of Indianmade foreign liquor were seized from the possession of the petitioner. The said case is pending investigation, however, the petitioner was released on bail. Similarly, on 11-12-1998 another Prohibition Case bearing no.404/98 was registered against the petitioner at Jhagadia Police Station for the offences made punishable under Secs. 66-B, 65-E, 116-B and 81 of the Bombay Prohibition Act wherein also it has been alleged that 32 bottles of Indian made foreign liquor were seized from the possession of the petitioner. The said case is also pending investigtion, however, the petitioner was released on bail.

The grounds of detention further indicate that two witnesses on assurance of anonymity have given statements against the petitioner on 12-1-1999 and 20-1-1999 with regard to bootlegging activities of the petitioner.

2. That in consideration of the aforesaid material, the detaning authority has come to the conclusion that the petitioner is a bottleggar within the meaning of Section 2(b) of " PASA". That the petitioner is released on bail and despite filing proceeding of Chapter Case under Section 93 of the Bombay Prohibition Act as well as under Section 107 of the Criminal Procedure Code, the bootlegging activities of the petitioner could not be prevented. That resort to general provisions of law being insuffcient to prevent the petitioner from continuing his bootlegging activity and as such, the impugned order is passed.

3. The petitioner has challenged the impugned order on numerous grounds. It has been contended on behalf of the petitioner at the Bar that the detention order dated

9-4-1999 is passed against the petitioner after about four months from the date of registered offence. That the statement of anonymous witnesses have been recorded after the petitioner was released on bail. As such the live link of antisocial activity between the alleged acts and the impugned action taken against the petitioner having been snapped, the impugned order is vitiated on account of non application of mind.

4. In the matter of PRADEEP NILKANTH PATURKAR VS. S. RAMAMURTHY & ORS (AIR 1994 SC 656), the Supreme Court has held that unexplained delay of five months and six days in passing the detention order from the date of registered offence which is the base for passing the order, the order is rendered invalid on account of the live link between the alleged activity and the impugned action taken having been snapped.

That this Court in the case of ELESH PATEL VS. COMMISSIONER OF POLICE (1997(1) G.L.H. 381 has also expressed the aforesaid view that where the live link between the alleged antisocial activity of the petitioner and the date on which the impugned action is taken is snapped, the detention order passed on the basis of registered case is invalid..

5. Mr. S.T. Mehta, learned A.G.P. appearing on behalf of the respondent has made an abortive attempt to salvage the issue by contending that the statements of anonymous witnesses were verified by the detaining authority on 16th March, 1999 only. The explanation though not supported by any affidavit filed on record could hardly be accepted as it is illogical. As a matter of fact, the detention order itself should contain the explanation for delayed action. In the instant case, there is no logical explanation why proposal to detain the petitioner was placed before the detaining authority so late and that too without considering the less drastic remedy of cancellation of bail though available under Section 437(5) of the Cr.P.C. Under the circumstances, I am constrained to hold that non consideration of availability of less drastic remedy by the respondent no.2 has vitiated the subjective satisfaction rendering the impugned order invalid.

6. As the petition succeeds on the aforesaid grounds, it is not necessary to consider and decide the other contentions raised in the petition.

6. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 9-4-1999 passed by the District Magistrate (respondent no.2) is hereby quashed and set aside. The petitioner-detenu-Vijaysinh alias Vipul Prabhatsinh alias Nagarsinh Parmar is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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